IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

(1) Notice of Motion No. 548 of 2007
in
Arbitration Petition (Ld) No.42 of 2007
with
(2) Notice of Motion No. 551 of 2007
in
Arbitration Petition (Ld) No. 43 of 2007
and
(3) Notice of Motion No.552 of 2007
in
Arbitration Petition (Ld) No. 44 of 2007

Anil M.Rao ..Petitioner

vs.

L.& T.Finance Limited & Anr. ...Respondents

Mrs.Uma G.Wagale for petitioner in all motions.
Ms.Shakuntala Joshi for respondent no.1.

CORAM: S.C.DHARMADHIKARI J.
31st August, 2007

P.C.

1. These notices of motion are by the petitioners who seek to impugn the Awards dated 14th December, 2005, 15th December, 2005 and 14th December, 2005 respectively.

2. Upon the petitions being presented to this Court, an objection was raised to the maintainability thereof on the ground that challenge to the Award is impermissible after the period prescribed in section 34(3) of the Arbitration and Conciliation Act, 1996.

3. It is this objection and consequence flowing therefrom which has led the petitioner to file the present notices of motion.

4. Mrs.Wagale, appearing in support, would urge that the application to set aside the Award is barred by limitation. However, the delay is of only 26 days. According to her, the period commenced from the date on wich the party making the application has received the Arbitral Award or if a request has been made under sec.33 from the date on which that request has been disposed of by the Tribunal. She submits that in this case the award was made on 24th December, 2005. She submits that the petitioner received the copy of this Award on 3rd October, 2006. The present petition is filed on 27th January, 2007 and consequently the delay is of 26 days and capable of being condoned in terms of the powers which are conferred on this Court by sub-sec.(3) of section 34 of the Act.

5. On the other hand, the claimant/respondent appearing through Ms.Joshi would urge that each of the Notice of Motion is liable to be dismissed. It is contended by her that the affidavit in support of the Notice of Motion is full of false and misleading statements. The delay cannot be condoned in law. Assuming it is so capable of, it

should not be condoned because the petitioner has made conflicting and contradictory statement before this Court.

6. It is her case that the award was served on the parties as early as on 9th January, 2006. She relied upon the affidavit of the Constituted Attorney of the first respondent and more particularly paras 4 and 5 thereof. She submits that the first respondent has initiated execution proceedings on 4th May, 2006. The execution proceedings were served on the petitioner on 7th July, 2006. As stated above a copy of the Award was served on the petitioner on 9th January, 2006. That aspect would become clear if the annexure to the affidavit in reply filed in this petition is perused by the Court. The claim, therefore, that the Award was known to the petitioner only on 27th September, 2006/3rd October, 2006 is false to the knowledge of the petitioner.

7. It is contended that in the affidavit dated 16th October, 2006 filed by the petitioner in the Execution Application which is duly affirmed, the petitioner has stated clearly that he does not intend to challenge the Arbitral Award. Now, a false and dishonest plea is raised that the petitioner is unaware of the proceedings or that he cannot read and write in English. She has also invited

my attention to para 6 of the affidavit in reply.

8. It is contended that in the affidavit filed in rejoinder, none of these statements are denied save and except stating that the Award was not received. Now, the petitioner denies even the acknowledgement below the communication which is referred to in the reply filed by the first respondent.

9. The Arbitration and Conciliation Act gives an opportunity to the party to have recourse against Arbitral Award. Chapter VII is titled as "Recourse against Arbitral Award". Section 34 of the Act and more particularly sub-sec.(3) states that an application for setting aside the Arbitral Award may not be made after 3 months have elapsed from the date on which the party making that application had received the Arbitral Award. The proviso thereto would indicate that satisfaction of the Court is necessary on the aspect that the applicant was prevented by sufficient cause from making an application to set aside the award within a period of 3 months and thereafter this Court will entertain the application within further period of 30 days but not thereafter. In the present case, none disputes that the Arbitral award was made on 24th December, 2005. After

perusal of the affidavit in reply and statements which are made more particularly in paragraphs 4 to 6 thereof, I am satisfied that the petitioner as well as the first respondent had received the Award/copy thereof on 9th January, 2006 itself. It is too late in the day to now urge that the signature on the communication is not that of the petitioner or that the petitioner is not familiar with English language and cannot read or write the same. The condonation, which is contemplated by the proviso to sec.34(3) is for genuine and bonafide cause which prevents the applicant from approaching the Court within the period of limitation. If the matter has reached the stage of execution and execution proceedings were also served, then, it is quite apparent that the arbitral award was known and received by the petitioner. To entertain a plea now that the award was not known till 3rd October, 2006 would be putting a premium on the dishonesty of the petitioner. The petitioner has been making conflicting and contradictory statements. There is much substance in the contention of Mrs.Joshi in that behalf.

10. In my opinion, the law clearly prohibits me from condoning the delay beyond the period stipulated therein and no equitable or discretionary provisions apply to the proceedings before me. I have no alternative but to

dismiss these notices of motion. The Notices of Motion stand dismissed with costs quantified at Rs.5000/-

(S.C.DHARMADHIKARI J.)